

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In Re:

BRENT MOSS BODINE and SANDRA  
LYN BODINE

Debtor(s)

Case No. 1:16-bk-23843

Chapter 7

Honorable Donald R. Cassling

**NOTICE OF MOTION**

To: *Law Offices of Arnold H. Landis, P.C., 77 West Washington Street, Suite 702, Chicago, Illinois 60602*

*See attached service list*

PLEASE TAKE NOTICE that on November 18, 2016 at 11:00 a.m., the undersigned will appear before the Honorable Donald R. Cassling at the Kane County Courthouse, 100 South Third Street, Courtroom 240, Geneva, Illinois and will then and there present **DEBTORS' MOTION TO REOPEN CHAPTER 7 CASE FOR THE LIMITED PURPOSE OF VACATING THE ORDER OF DISCHARGE, ENTERING REAFFIRMATION AGREEMENTS, AND RE-ENTRY OF THE ORDER OF DISCHARGE**, a copy of which is hereby served upon you.

**CERTIFICATE OF SERVICE**

I, Joseph Scott Davidson, an attorney, hereby certify that on October 28, 2016, I caused a copy of this notice and motion to be served by using the CM/ECF system or by United States First Class Mail to all parties listed on the attached service list, before the hour of 5:00 p.m. from the office located at 900 Jorie Boulevard, Suite 150, Oak Brook, Illinois 60523.

*/s/ Joseph Scott Davidson*

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Label Matrix for local noticing  
0752-1  
Case 16-23843  
Northern District of Illinois  
Chicago  
Fri Oct 28 11:26:24 CDT 2016

U.S. Bankruptcy Court  
Eastern Division  
219 S Dearborn  
7th Floor  
Chicago, IL 60604-1702

AFRI  
1310 Martin Luther King Jr  
Bloomington, IL 61701-1465

Amex  
Correspondence  
Po Box 981540  
El Paso, TX 79998-1540

Bank Of America  
Nc4-105-03-14  
Po Box 26012  
Greensboro, NC 27420-6012

Capital One  
Po Box 30285  
Salt Lake City, UT 84130-0285

Central DuPage Hospital  
25 N. Winfield Rd.  
Winfield, IL 60190-1295

Citibank  
Citicorp Credit Services/Attn: Centraliz  
Po Box 790040  
Saint Louis, MO 63179-0040

Citibank/Best Buy  
Centralized Bankruptcy/CitiCorp Credit S  
Po Box 790040  
St Louis, MO 63179-0040

DirectTV  
Po Box 69  
Columbus, OH 43216

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421 N. County Farm Rd.  
Wheaton, IL 60187-3990

Dupage County Treasurer  
421 N. County Farm Rd.  
Wheaton, IL 60187-3992

Equifax Information Services, LLC  
1550 Peachtree St. NW  
Atlanta, GA 30309

Equifax Information Services, LLC  
Po Box 740241  
Atlanta, GA 30374-0241

Experian Information Solutions, Inc.  
475 Anton Blvd.  
Costa Mesa, CA 92626-7037

Experian Information Solutions, Inc.  
Po Box 4500  
Allen, TX 75013-1311

Glenview State Bank  
800 Waukegan Rd  
Glenview, IL 60025-4310

Illinois Department of Revenue  
Bankruptcy Section  
Po Box 64338  
Chicago, IL 60664-0338

(p)INTERNAL REVENUE SERVICE  
CENTRALIZED INSOLVENCY OPERATIONS  
PO BOX 7346  
PHILADELPHIA PA 19101-7346

Kohls/Capital One  
Po Box 3120  
Milwaukee, WI 53201-3120

Macy's  
Po Box 183083  
Columbus, OH 43218-3083

Nelnet Loans  
Nelnet Claims  
Po Box 82505  
Lincoln, NE 68501-2505

Pella Window  
1600 W. 16th St.  
Oak Brook, IL 60523-1302

Southwest Rapid Reward  
Po Box 15153  
Wilmington, DE 19886-5153

Sunrise Credit Services  
PO Box 9100  
Farmingdale, NY 11735-9100

Synchrony Bank  
Po Box 530916  
Atlanta, GA 30353-0916

Synchrony Bank/ HH Gregg  
Po Box 965064  
Orlando, FL 32896-5064

Synchrony Bank/Amazon  
Po Box 965064  
Orlando, FL 32896-5064

Synchrony Bank/Lowes  
Po Box 965064  
Orlando, FL 32896-5064

Synchrony Bank/Walmart  
Po Box 965064  
Orlando, FL 32896-5064

Synchrony/Discount Tire  
Po Box 960061  
Orlando, FL 32896-0061

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4515 N SANTA FE AVE  
OKLAHOMA CITY OK 73118-7901

Target  
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Mailstop BT Po Box 9475  
Minneapolis, MN 55440-9475

TransUnion LLC  
Po Box 2000  
Chester, PA 19022-2000

Visa Dept Store National Bank  
Attn: Bankruptcy  
Po Box 8053  
Mason, OH 45040-8053

Wffnathbank  
Cscl Dispute Tm-mac N8235-04m  
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**IN THE UNITED STATES BANKRUPTCY COURT  
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EASTERN DIVISION**

In Re:

BRENT MOSS BODINE and SANDRA  
LYN BODINE

Debtor(s)

Case No. 1:16-bk-23843

Chapter 7

Honorable Donald R. Cassling

**DEBTORS' MOTION TO REOPEN CHAPTER 7 CASE FOR THE LIMITED PURPOSE  
OF VACATING THE ORDER OF DISCHARGE, ENTERING REAFFIRMATION  
AGREEMENTS, AND RE-ENTRY OF THE ORDER OF DISCHARGE.**

BRENT MOSS BODINE and SANDRA LYN BODINE (hereinafter "Debtors"), by and through their attorneys, SULAIMAN LAW GROUP, LTD., pursuant to Section 350(b) of the United States Bankruptcy Code, Rules 5010 and 9024 of the Federal Rules of Bankruptcy Procedure and Rule 60(b) of the Federal Rules of Civil Procedure, moves to reopen their chapter 7 case for the limited purpose of vacating the Order of Discharge, approval of reaffirmation agreements, and re-entry of the Order of Discharge, and in support thereof, states as follows:

1. On July 25, 2016, a bankruptcy case concerning the Debtors was filed under Chapter 7 of the United States Bankruptcy Code.
2. The schedules filed by the Debtors listed a 2013 Chevrolet Equinox secured by an auto loan in favor of Glenview State Bank, account number XXXXXXXXXXXXXXX9313.
3. The schedules filed by the Debtors listed a 2014 Chevrolet Impala secured by an auto loan in favor of Glenview State Bank, account number XXXXXXXXXXXXXXX8447.
4. The Statement of Intention filed by the Debtors indicated Debtors' intention to retain the 2013 Chevrolet Equinox and 2014 Chevrolet Impala and enter into a Reaffirmation Agreement.
5. On August 25, 2016, Glenview State Bank, by and through their attorneys, Law Offices of Arnold H. Landis, P.C. sent counsel for the Debtors Reaffirmation Agreements for the 2013 Chevrolet

Equinox and for the 2014 Chevrolet Impala. Counsel for the Debtors inadvertently overlooked the Reaffirmation Agreements.

6. On October 18, 2016, the Debtors were granted a discharge under Section 727 of the United States Bankruptcy Code.
7. On October 21, 2016, Glenview State Bank manifested its intent to take action against the 2013 Chevrolet Equinox and 2014 Chevrolet Impala.
8. A bankruptcy court has the powers of a court of equity. 28 U.S.C. § 1481.
9. An equity court's power to vacate an order is inherent in its jurisdiction and explicitly defined in Fed. R. Civ. P. 60.
10. Fed. R. Bankr. P. 9024 incorporates Fed. R. Civ. P. 60, which, inter alia, allows a court to vacate an order for "any \*\*\* reason justifying relief from the operation of the judgment." Fed. R. Civ. P. 60(b)(6).
11. The Supreme Court has interpreted this statutory provision liberally to allow the vacating of an order when "appropriate to accomplish justice." *Klapprott v. United States*, 355 U.S. 601, 614-15, 69 S. Ct. 384, 390, 93 L. Ed. 266 (1948).
12. Courts have employed this provision to vacate discharge orders for the purpose of allowing Chapter 7 debtors to enter into enforceable reaffirmation agreements under certain circumstances. See *In re Long*, 22 B.R. 152, 154 (Bankr. D. Me. 1982); *In re Solomon*, 15 B.R. 105, 106 (Bankr. E.D. Pa. 1981).
13. The use of Fed. R. Civ. P. 60(b)(6) to vacate a debtor's discharge is at odds with the notion that judicial orders and judgments should be afforded a high degree of finality. See *Arizona v. California*, 460 U.S. 605, 644, 103 S. Ct. 1382, 75 L. Ed. 2d 318 (1983) ("Concern for finality remains an important policy ...."); *In re Tuan Tan Dinh*, 90 B.R. 743, 745 (Bankr. E.D. Pa. 1988) ("We believe that the finality of a discharge order must be accorded special consideration.").

14. Accordingly, motions to vacate discharge orders for the purpose of allowing enforceable reaffirmation agreements are not granted absent special circumstances. *In re Edwards*, 236 B.R. 124, 127 (Bankr. N.H. 1999).
15. A Chapter 7 debtor intending to execute a reaffirmation agreement must remain cognizant of two relevant timing restrictions.
16. The First Circuit's decision in *Bank of Boston v. Burr (In re Burr)*, 160 F.3d 843 (1st Cir. 1998), clearly requires a debtor that wishes to retain property that is collateral for consumer debts to perform his or her stated intentions under Section 521(2)(A) within the time period prescribed under Section 521(2)(B), while Section 524(c)(1) requires a reaffirmation agreement to be entered into pre-discharge.
17. However, if necessary, debtors may pursue relief from these time restraints.
18. If a debtor anticipates a problem with performing his or her intention within Section 521's prescribed time period, the debtor may obtain an extension.
19. Section 521(2)(B) provides:

Within forty-five days after the filing of a notice of intent under this section, or *within such additional time as the court, for cause, within such forty-five day period fixes*, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph ....

Section 521(2)(B) (emphasis added).

16. In an effort to temper Section 524(c)(1)'s timing restriction, Fed. R. Bankr. P. 4004(c)(2) allows a debtor to file a motion requesting that an order granting his or her discharge be deferred for "up to 30 days ... and, on an additional motion filed within that period, to a date certain after expiration of the 30 days." 9 King et al., *Collier on Bankruptcy* P 4004.04[8] (15<sup>th</sup> rev. ed. 1997)
17. The Advisory Committee Note accompanying Fed. R. Bankr. P. 4004 states that the purpose of subpart (c)(2) is to afford debtors additional time to negotiate reaffirmation agreements given that they are not enforceable if entered into post-discharge. *See* Fed. R. Bankr. P. 4004 Advisory Committee's Note.

18. Thus, the provisions of Section 521 and Fed. R. Bankr. P. 4004 provide a Chapter 7 debtor with two procedures to obtain additional time to negotiate and execute an enforceable reaffirmation agreement.
19. In *Tuan Tan Dinh*, the court addressed the issue of what standard should govern the use of Fed. R. Civ. P. 60(b) in the context of vacating a discharge order.
20. Noting the desire for finality with respect to discharge orders, the *Tuan Tan Dinh* court set forth the following two factors as important in deciding whether to vacate a discharge order: (1) the consideration of relative prejudice to the parties; and (2) the degree of the debtor's culpability in allowing the order to be entered. *See Tuan Tan Dinh*, 90 B.R. at 746.
21. The court stated that when these two factors "tip very strongly in favor of the moving party," then a discharge order may be vacated. *See Id.*
22. As applied to the instant facts, the *Tuan Tan Dinh* standard yields the conclusion that this Court should grant the Debtors' motion to vacate the discharge order.
23. Vacating the Debtors' discharge would result in no prejudice to Glenview State Bank, but not doing so would seriously prejudice the Debtors – who would be facing certain repossession of both the 2013 Chevrolet Equinox and 2014 Chevrolet Impala.
24. Both the Debtors and Glenview State Bank desire to enter into an enforceable reaffirmation agreement and thus both would prefer that the Debtors' discharge be vacated in order that they may enter into such an agreement.
25. The reaffirmation agreements concern the Debtors' sole means of transportation, assets which are very important to the Debtors' fresh start; and therefore presents exceptional circumstances. *See Long*, 22 B.R. at 154 (finding significant the fact that the reaffirmation agreement pertained to the debtors' residence in deciding that the debtors' discharge should be vacated to allow the agreement to be enforceable).

26. In addition, the Debtors were not at fault in allowing the discharge order to be entered before the execution of the reaffirmation agreements, and find themselves in this position as a result of excusable neglect, inadvertence and/or mistake.
27. Thus, the two relevant factors tip very strongly in favor of the Debtors and warrant the vacating of their discharge order for the purpose of allowing them to enter into an enforceable reaffirmation agreement.
28. Upon entry of the Reaffirmation Agreements, Debtors would immediately seek re-entry of the Order of Discharge. *See Midkiff v. Steward (In re Midkiff)*, 342 F.3d 1194 (10<sup>th</sup> Cir. 2003) (“a Rule 60(b) motion “does not affect the finality of a judgment or suspend its operation.” Fed. R. Civ. P. 60(b). Thus, when a court grants relief under Rule 60(b), the discharge is not “revoked” but is simply altered to provide limited relief as appropriate under the circumstances.”)

WHEREFORE, the Debtors respectfully request:

1. that the Court reopen their chapter 7 case for the limited purpose of vacating the Order of Discharge and entering the Reaffirmation Agreements;
2. that the Court re-enter the Order of Discharge; and
3. that the Court grant any other relief deemed appropriate and equitable.

Dated: October 28, 2016

/s/ Joseph Scott Davidson

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